IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 20400 of 2007(C)

OS.17/2004 of PRL.SUB COURT,THRISSUR

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PETITIONER:

K.R.SIVAN, S/O. RAJAN,
KATHANAPARAMBIL HOUSE, ETTUMANA,
THRISSUR DISTRICT.

BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.
SMT.REKHA C.NAIR

RESPONDENTS:

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1. RAVEENDRADAS, S/O. KUNJU,
ATTUPURATH HOUSE, PERUMPILLISSERY P.O.,
THRISSUR DISTRICT.

2. RAMACHANDRAN, S/O. GOVINDAN,
CHEMMANDA HOUSE, PUNKUNNAM P.O.,
THRISSUR DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.20400 OF 2007 C

Dated this the 3rd July, 2007.

JUDGMENT

This writ petition is preferred to set aside the order passed by the Principal Subordinate Judge, Thrissur in I.A.131 & 132/07 in O.S.17/04. The suit is one for realisation of the amount. There was an ex parte decree and it is to set aside that ex parte decree with the petition to condone delay the application was filed and it had been allowed by the court below. It is against that decision the present writ petition is filed. It is a settled principle that the broad principles of natural justice warrants that an opportunity should be given to the parties to contest their claim on merits unless it is established that they are grossly negligent or guilty of grave misconduct. If it is not there then certainly an opportunity has to be given. A perusal of the order of the court would reveal that there was an ex parte order passed against the defendant. The defendant filed an application to set aside the ex parte order which was dismissed and against that he preferred a C.M.A which was allowed and thereafter a writ petition was filed wherein this court held that since the suit itself had been disposed of and an ex parte decree had been passed no court can set aside the

ex parte order in a case which is not pending and therefore directed the defendant in the suit to file an appeal or to file an application for setting aside the ex parte decree under Order IX Rule 13 CPC. It is true that during the pendency of the case for setting aside an ex parte order the suit itself has been decreed ex parte. So, in order to prove gross negligence and grave misconduct the lethargy of the defendant has to be found out. But here is a case where he had fought the case on all three tiers and thereafter had come forward with the application to set aside the ex parte decree. Therefore, I am inclined to agree with the learned trial court that sufficient reason exists to condone the delay and to set aside the ex parte decree. Therefore the writ petition fails and is dismissed. Learned counsel for the writ petitioner apprehends that in the guise of setting aside ex parte decree, applications are filed to take away the security furnished in the court. It is a settled principle that the plaintiff must be able to enjoy the usufructs of the decree if ultimately succeeds. With that broad principle in mind the court below shall be slow in returning the security unless it is fully satisfied that he gives security to the satisfaction of the court as well as the plaintiff. With

these observations writ petition is dismissed.

M.N.KRISHNAN
Judge

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